



Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

- - - - - x  
:  
In the Matter of: :CC Docket  
Petition of WorldCom, Inc., Pursuant :No. 00-218  
to Section 252(e)(5) of the :  
Communications Act for Expedited :  
Preemption of the Jurisdiction of the :  
Virginia State Corporation Commission :  
Regarding Interconnection Disputes :  
with Verizon Virginia, Inc., and for :  
Expedited Arbitration :  
:  
In the Matter of: :CC Docket  
Petition of Cox Virginia Telecom, Inc., :No. 00-249  
Pursuant to Section 252(e)(5) of the :  
Communications Act for Preemption :  
of the Jurisdiction of the Virginia :  
State Corporation Commission Regarding :  
Interconnection Disputes with Verizon :  
Virginia, Inc., and for Arbitration :  
:  
In the Matter of: :CC Docket  
Petition of AT&T Communications of :No. 00-251  
Virginia, Inc., Pursuant to Section :  
252(e)(5) of the Communications Act :  
for Preemption of the Jurisdiction :  
of the Virginia Corporation Commission :  
Regarding Interconnection Disputes with :  
Verizon Virginia, Inc. :  
:  
- - - - - x Volume

Thursday, October 11, 2001  
Washington, D.C.

The hearing in the above-entitled matter came on, pursuant to Notice, at 9:30 a.m.

BEFORE:

DOROTHY ATTWOOD, Arbitrator

KATHERINE FARROBA, Staff

JEFFREY DYGERT, Staff

JOHN STANLEY, Staff

FCC Staff Members:

HENRY THAGGART

CATHY CARPINO

WILLIAM KEHOE

PRAVEEN GOYAL

TAMARA PREISS

ALEXIS JOHNS

BRAD KOERNER

JONATHAN REEL

PAUL MOON

JERRY STANSHINE

## APPEARANCES:

On behalf of the Verizon:

RICHARD D. GARY, ESQ.  
KELLY L. FAGLIONI, ESQ.  
W. JEFFREY EDWARDS, ESQ.  
EDWARD P. NOONAN, ESQ.  
JENNIFER McCLELLAN, ESQ.  
Hunton & Williams  
Riverfront Plaza, East Tower  
951 East Byrd Street  
Richmond, Virginia 23219-4074  
(804) 788-8200

On behalf of the AT&T:

MARK A. KEFFER, ESQ.  
IVARS V. MELLUPS, ESQ.  
GEORGE R. (Ridge) LOUX, ESQ.  
RICHARD H. RUBIN, ESQ.  
STEPHANIE A. BALDANZI, ESQ.  
AT&T  
3033 Chain Bridge Road  
Oakton, Virginia 22185  
(703) 691-6046

On behalf of WorldCom:

JODIE L. KELLEY, ESQ.  
MARK SCHNEIDER, ESQ.  
KIMBERLY SCARDINO, ESQ.  
Jenner & Block, L.L.C.  
601 13th Street, N.W.  
Washington, D.C. 20005  
(202) 639-6066

APPEARANCES: (Continued)

On behalf of WorldCom, Inc.:

ALLEN FREIFELD, ESQ.  
1133 19th Street, N.W.  
Washington, D.C. 20036

On behalf of Cox Virginia Telecom, Inc.:

J.G. HARRINGTON, ESQ.  
JILL BUTLER, ESQ.  
Dow, Lohnes & Albertson  
1200 New Hampshire Avenue, N.W.  
Suite 800  
Washington, D.C. 20036  
(202) 776-2818

## C O N T E N T S

PANEL	PAGE
INTERCARRIER COMPENSATION PANEL:	
MARK ARGENBRIGHT GARY BALL DR. FRANCIS COLLINS ROBERT KIRCHBERGER JOHN D. SCHELL DAVID L. TALBOTT	
Cross-examination by Mr. Oates	1651
STEVEN J. PITTERLE	
Cross-examination by Mr. McRae	1733
Cross-examination by Mr. Harrington	1744
Cross-examination by Ms. Kelley	1794
Cross-examination by Mr. Harrington	1803
Cross-examination by Ms. Schmidt	1826
Questions from Staff	1830
SUBPANEL 1: CHRIS ANTONIOU PAMELA RICHARDSON RON ZIMMERMAN	
Questions from Staff	1924

1644

E X H I B I T S

NUMBER	MARKED	ADMITTED
WorldCom Nos. 48, 49		1647
Verizon Nos. 52, 53		1647
Cox Nos. 20, 21	1803	1827
Verizon No. 54		1827
Verizon No. 37	1906	
Verizon No. 55	1914	1916

RECORD REQUESTS

NUMBER	PAGE
1.	1774

## 1 P R O C E E D I N G S

2 MR. DYGERT: I think if people are ready,  
3 we could get started.

4 First, we wanted to get back to the  
5 parties on the cost scheduling issues that were the  
6 subject of some e-mails earlier in the week.

7 MS. PREISS: Okay, sorry. I'm referring  
8 to the e-mail from Katherine Ronis, dated  
9 October 9th. We just wanted to let you know that  
10 we are fine with the schedule for the cost part of  
11 the hearings proposed by the parties, and we are  
12 also fine with the briefing schedule proposed by  
13 the parties. So, the initial brief would be due  
14 November 15th. The reply brief would be December  
15 3rd.

16 And on the cost schedule, I do understand  
17 we might be hearing back from the parties as to  
18 whether the switching rate design panel, which is  
19 West, Goldfarb, and Kirchberger, might be handled  
20 at the same time or just after the switching rate  
21 panel on October 24th. But subject to that  
22 adjustment, that possible adjustment, we are fine



1 with the schedule proposed by the parties.

2 MR. DYGERT: And also if you all have  
3 thoughts about when we could pick back up next  
4 week, I thought we might talk about that briefly at  
5 this point.

6 MR. EDWARDS: Since it was at our request,  
7 I think we will accommodate what we can, so why  
8 don't we hear from petitioners.

9 MS. KELLEY: I know that our--one of our  
10 witnesses is unavailable Tuesday and Wednesday. He  
11 will be at a hearing in Florida. And then--but  
12 Thursday and Friday are generally okay. I think  
13 Monday was a problem for Verizon, so we didn't sort  
14 of check on that. Thursday and Friday are the days  
15 we are looking at to start on Thursday because  
16 somebody has got to get out on Friday at the end of  
17 the day.

18 MR. DYGERT: All right. Friday is not  
19 ideal for the FCC.

20 (Discussion off the record.)

21 MR. DYGERT: Does anyone else have any  
22 preliminary matters that we need to deal with? I'm

1 guessing no, then.

2 MS. SCHMIDT: Just AT&T passed out the--a  
3 copy of AT&T Exhibit 36, which is the network  
4 diagram that was drawn by Mr. Talbott yesterday  
5 afternoon, but we would like to have that moved  
6 into evidence.

7 MR. DYGERT: All right. And we also have  
8 WorldCom Exhibits 48 and 49 that were drawn  
9 yesterday, as well as Verizon Exhibits 52 and 53.

10 Are there any objections from any of the  
11 parties to any of these exhibits?

12 MS. KELLEY: None from WorldCom.

13 MR. EDWARDS: None from Verizon.

14 MR. HARRINGTON: Not from Cox.

15 MS. SCHMIDT: Not from AT&T.

16 MR. DYGERT: Okay. Then these will be  
17 admitted into the record.

18 (WorldCom Exhibit Nos. 48  
19 and 49, and Verizon Exhibit  
20 Nos. 52 and 53, were  
21 admitted into evidence.)

22 MR. DYGERT: So, it means we are now back

1 to the intercarrier compensation panel, I believe,  
2 with--all of which remains is issues I-5--correct  
3 me if I'm wrong on this--I-5, I-6, and IV-35  
4 because the others were either handled earlier  
5 already or are being treated with--in connection  
6 with another issue on one of the network  
7 architecture panels, subpanel five.

8 MS. KELLEY: That's my understanding.

9 MR. OATES: That's ours as well.

10 MS. DAILEY: Can I get a clarification on  
11 an issue.

12 IV-35 is listed twice on intercarrier  
13 compensation subpanel--I don't see the subpanel,  
14 but the panel that's here, but it's also listed  
15 under pricing terms and conditions on subpanel two.  
16 Is there going to be testimony on both of those  
17 panels on this issue?

18 MS. KELLEY: Not from us, our witnesses,  
19 although our witness will be here, so we could put  
20 him up twice, but we anticipated just having him on  
21 this panel.

22 I'm trying to recall what happened. It

1 had to do with something with the Verizon witness  
2 put their testimony in with their pricing terms and  
3 conditions panel, I believe, and we didn't  
4 structure our testimony that way, but we had always  
5 thought of it as an intercarrier compensation  
6 issue, and I think that's why I thought there was  
7 this sort of odd divide, if I remember correctly.

8 MR. OATES: Yeah, I don't know the history  
9 of it, and that may well be right. We have a  
10 witness here who is prepared to address that issue.  
11 I can't say that there may not be some related  
12 comments or carryover on the pricing terms and  
13 conditions panel as well. I'm simply not familiar  
14 with what that panel is going to cover. But we are  
15 prepared to cover that issue today.

16 MS. DAILEY: Well, is there a different  
17 witness on subpanel two than there is on the  
18 intercarrier compensation panel?

19 MR. OATES: On the pricing terms and  
20 conditions panel?

21 MS. DAILEY: Yeah.

22 MR. OATES: We will check on that.

1 MR. DYGERT: All right. I gather from the  
2 presence of the petitioner's witnesses at the  
3 witness table, that I guess it's Verizon's turn to  
4 cross. Gentlemen, would you first please identify  
5 yourselves for the record. And since you all look  
6 like familiar faces, I think you are all still  
7 under oath.

8 MR. ARGENBRIGHT: Mark Argenbright,  
9 WorldCom.

10 MR. BALL: Gary Ball, WorldCom.

11 DR. COLLINS: Francis Collins, appearing  
12 on behalf of Cox.

13 MR. KIRCHBERGER: Bob Kirchberger, AT&T.

14 MR. SCHELL: John Schell, AT&T.

15 MR. TALBOTT: David L. Talbott, AT&T.

16 MR. DYGERT: Thank you.

17 MR. OATES: If I could answer a question  
18 posed earlier, it doesn't appear that we have a  
19 witness or that we expect to have testimony on 435  
20 on the pricing terms and conditions panel. It will  
21 just be the witness we have here today.

22 MR. DYGERT: Okay, Mr. Oates, whenever

1 you're ready.

2 CROSS-EXAMINATION

3 MR. OATES: Good morning, gentlemen. If I  
4 could first direct my questions to the AT&T  
5 witness, Mr. Kirchberger, and these questions  
6 relate to issue "Eye" five, or I-5, rather.

7 Mr. Kirchberger, what I'm going to be  
8 referring to in asking you some questions is the  
9 proposed--AT&T proposed contract language that was  
10 appended to your direct testimony and labeled as  
11 "Exhibit A" to that testimony. The testimony  
12 itself is AT&T Exhibit 4, I believe.

13 Is that still the current and correct  
14 contract language?

15 MR. KIRCHBERGER: To the best of my  
16 knowledge, it is.

17 MR. OATES: I want to make sure there's  
18 nothing different on the JDPL.

19 Mr. Kirchberger, is it AT&T's position  
20 that that language offered in Exhibit A to your  
21 direct testimony merely implements but does not  
22 alter in any fashion the requirements of the FCC's

1 ISP Remand Order? And when I referred to that  
2 order, or when I say "ISP Remand Order," I'm  
3 talking about the order released on April 27 from  
4 the Commission, addressing reciprocal compensation  
5 for ISP contracts.

6 MR. KIRCHBERGER: I think the majority of  
7 it is just detailed implementation guidelines.  
8 There is some language in there that is not in the  
9 order, and that is that Verizon has paid off  
10 past-due amounts for ISP traffic prior to  
11 June 14th, 2001.

12 So, I do not believe that you will find  
13 that in the Remand Order, but it is in this. But  
14 otherwise, the issues surrounding calculation of  
15 the caps and the billing suggestions are detailed  
16 implementation procedures that our experts have  
17 worked out.

18 MR. OATES: And is it your position that  
19 those detailed implementation procedures that you  
20 described are, other than the historical billing  
21 dispute, that those procedures are not in conflict  
22 with the ISP Remand Order in any fashion?

1 MR. KIRCHBERGER: That is my  
2 understanding.

3 MR. OATES: Okay. I would like to ask you  
4 about a few of those, Mr. Kirchberger.

5 First, in Section 2.1 of the AT&T proposed  
6 language, AT&T purports to define the term "local  
7 traffic"; is that not right?

8 MR. KIRCHBERGER: Yes.

9 MR. OATES: And are you aware that the  
10 FCC, in its ISP Remand Order, expressly avoided  
11 reliance on a definition of local traffic in  
12 determining what was eligible for ISP recip comp?

13 MR. KIRCHBERGER: That is my  
14 understanding; that is correct.

15 MR. OATES: Now, under the AT&T definition  
16 of "local traffic," that traffic is intended, is it  
17 not, to encompass essentially all nontoll traffic,  
18 other than ISP-bound traffic?

19 MR. KIRCHBERGER: I believe that would be  
20 a fair definition.

21 MR. OATES: I guess what I'm getting at,  
22 Mr. Kirchberger, is that traffic is subject to



1 either interstate or intrastate access toll, AT&T  
2 would exclude from its definition of "local  
3 traffic," would it not?

4 MR. KIRCHBERGER: Toll traffic that  
5 qualifies for access payments would be excluded  
6 from the local traffic definition.

7 MR. OATES: And that toll traffic that is  
8 excluded from local traffic is also excluded from  
9 the calculation that's performed in doing the  
10 three-to-one ratio that derives the threshold of  
11 traffic that is eligible for ISP-bound recip comp;  
12 is that correct?

13 MR. KIRCHBERGER: I believe that's my  
14 understanding.

15 MR. OATES: And that sort of toll traffic  
16 that is excluded would include either intrastate or  
17 interstate exchange access traffic; is that right?

18 MR. KIRCHBERGER: It's my understanding.

19 MR. OATES: And it would exclude  
20 information access traffic; is that right?

21 MR. KIRCHBERGER: Can you give me a better  
22 definition of what you mean by "information access

1 traffic."

2 MR. OATES: Well, would it exclude  
3 information access traffic, as that term is defined  
4 by--the Commission defined or discussed in the  
5 Remand Order?

6 MR. KIRCHBERGER: Without actually looking  
7 for that definition in the ISP Remand Order, I  
8 cannot answer that question.

9 MR. OATES: Are you familiar enough with  
10 the order, Mr. Kirchberger, to know that the  
11 Commission found that information access traffic is  
12 traffic that is subject to 251(g) of the Act and,  
13 therefore, not subject to 251(b)(5) recip comp?

14 MR. KIRCHBERGER: I will take that subject  
15 to check. I will accept that.

16 MR. OATES: Subject to confirmation,  
17 that's your understanding?

18 MR. KIRCHBERGER: Well, subject to  
19 actually reading that part of the Remand Order.

20 MR. OATES: I won't make you do that,  
21 Mr. Kirchberger.

22 Assuming, though, that my reading of

1 paragraph 34 of the ISP Remand Order is correct,  
2 then, and that information access traffic was found  
3 by the Commission to be subject to 251(g) and  
4 excluded from reciprocal compensation, information  
5 access traffic would then be a form of traffic that  
6 AT&T would exclude from its definition of local  
7 traffic and from the three-to-one calculation; is  
8 that right?

9 MR. KIRCHBERGER: I will accept that.

10 MR. OATES: And would AT&T agree, rather,  
11 that optional extended local calling area traffic  
12 would be excluded from the definition--or from the  
13 traffic, rather, that's included in the  
14 three-to-one analysis?

15 MR. KIRCHBERGER: Yes.

16 MR. OATES: And would that three-to-one  
17 analysis also exclude tandem transit traffic?

18 MR. KIRCHBERGER: I don't know. You are  
19 at a level of detail of the calculation that I  
20 actually can't answer, sorry.

21 MR. OATES: Let me refer you back to the  
22 AT&T contract language itself, and specifically

1 paragraph or Section 2.1, once again.

2 MR. KIRCHBERGER: Yes.

3 MR. OATES: And specifically the last  
4 sentence in that particular section. And let me  
5 just read it, and--do you have that language in  
6 front of you, Mr. Kirchberger?

7 MR. KIRCHBERGER: Is this from my Exhibit  
8 A on my attachment?

9 MR. OATES: Yes, yes, it is.

10 The last sentence reads, (reading) All  
11 other local traffic that is exchanged between the  
12 parties--and you understand "other local traffic"  
13 excludes--excuse me just a second.

14 Okay. Would you do me a favor,  
15 Mr. Kirchberger, read that Section 2.1 just to  
16 yourself so you are familiar with it.

17 (Pause.)

18 MR. KIRCHBERGER: Yes, I have read it.

19 MR. OATES: And the second sentence,  
20 essentially, reflects the three-to-one rule, does  
21 it not?

22 MR. KIRCHBERGER: Yes.

1 MR. OATES: And the second sentence then  
2 say, (reading) All other local traffic is  
3 conclusively defined to be voice traffic.

4 MR. KIRCHBERGER: Yes, that's what the  
5 words say.

6 MR. OATES: And that traffic, under AT&T's  
7 proposal, would be subject to reciprocal  
8 compensation; is that right?

9 MR. KIRCHBERGER: Yes, it would.

10 MR. OATES: Now, in the ISP Remand Order,  
11 Mr. Kirchberger, does the three-to-one rule not  
12 create a rebuttable presumption?

13 MR. KIRCHBERGER: Yeah, yeah, I believe it  
14 does. It does create a rebuttable presumption.

15 MR. OATES: All right. And in fact, the  
16 Commission, at paragraph 79 of the ISP Remand  
17 Order, goes on to state or to explain that a party  
18 has an opportunity to rebut that three-to-one  
19 presumption, discusses generally how a party may do  
20 so; is that right?

21 MR. KIRCHBERGER: That is correct.

22 MR. OATES: Under the AT&T proposal, does

1 a party have any opportunity to rebut the

2 three-to-one presumption?

3 MR. KIRCHBERGER: Narrow reading of it  
4 would say that the word "conclusively" questions  
5 the rebuttable presumption.

6 MR. OATES: It suggests that the  
7 presumption is irrebuttable, doesn't it?

8 MR. KIRCHBERGER: It certainly leans that  
9 way. You know, I can't give you a legal answer on  
10 that, but you could read it that way, yes, sir.

11 MR. OATES: All right. Let me ask you to  
12 look at Section 2.2.3 of your proposed language,  
13 and this particular section sets forth three  
14 prerequisites that AT&T proposes to implementing  
15 the Commission ordered compensation scheme for  
16 ISP-bound traffic; isn't that right?

17 MR. KIRCHBERGER: That's correct.

18 MR. OATES: Do those prerequisites appear  
19 anywhere in the Commission's ISP Remand Order?

20 MR. KIRCHBERGER: No, I indicated in my  
21 earlier answer that one of these three was one of  
22 the examples I gave that indicated that there were

1 some things in our contract language that were not  
2 in the Remand Order.

3 MR. OATES: Earlier, you alluded to  
4 payment of past-due amounts for ISP reciprocal  
5 compensation, and that's--

6 MR. KIRCHBERGER: That's correct. That's  
7 C.

8 MR. OATES: That's number C--letter C,  
9 rather, the prerequisite.

10 If you would, Mr. Kirchberger, read  
11 prerequisite A and B.

12 MR. KIRCHBERGER: (Reading) The rates  
13 described in Section 2.2.2 shall apply only if, A,  
14 Verizon requests that the ISP-bound traffic be  
15 treated at the rate specified in the ISP Remand  
16 Order; B, Verizon offers to exchange all traffic  
17 subject to the reciprocal compensation provisions  
18 of Section 251(b)(5) with LECs, CLECs, and CMRS  
19 providers at these rates; and C, Verizon has paid  
20 all past-due amounts owed to AT&T--

21 MR. OATES: You could stop there,  
22 Mr. Kirchberger. I was actually going to ask you

1 to read it to yourself, but it's A and B I would  
2 like to ask you about. You already addressed C.

3 Can you explain what the difference  
4 between A and B is.

5 MR. KIRCHBERGER: It's my understanding  
6 that B is the mirroring language, and A is requests  
7 that Verizon actually requests the ISP-bound  
8 traffic be treated. My understanding is there was  
9 a letter of May 14th that Verizon had sent to the  
10 CLECs, or at least to AT&T that I believe addresses  
11 A.

12 MR. OATES: Okay. So, it's your  
13 understanding that Verizon has satisfied  
14 prerequisite A?

15 MR. KIRCHBERGER: I can't give you a legal  
16 answer whether it satisfied a prerequisite, but it  
17 is my understanding that that letter is on record  
18 that you sent out on May 14th--a reasonable man  
19 might say that it satisfied. Legally, I can't give  
20 you that answer.

21 MR. OATES: And do you know,  
22 Mr. Kirchberger, whether that prerequisite outlined



1 in A there, 2.2.2.3.A, is something that appears in  
2 the ISP Remand Order?

3 MR. KIRCHBERGER: I actually don't know  
4 the answer.

5 MR. OATES: You referred to in describing  
6 B to the mirroring language. And are you referring  
7 to something that is in the ISP Remand Order, which  
8 is the obligation that the Commission places on  
9 ILECs to offer or exchange traffic subject to  
10 251(b)(5) at the same rates that are proposed for  
11 ISP-bound traffic? Is that what you mean by the  
12 mirroring?

13 MR. KIRCHBERGER: Yeah, that's my  
14 understanding.

15 MR. OATES: In your--and let me read you  
16 from paragraph 89 of the ISP recip comp order, and  
17 if you have that in front of you, it's on page 44  
18 about three lines down. The sentence reads,  
19 (reading) The rate caps for ISP-bound traffic that  
20 we adopt here today, therefore--apply therefore  
21 only if an incumbent elects to exchange all traffic  
22 subject to Section 251(b)(5) at the same rate.

1 That's the mirroring obligation?

2 MR. KIRCHBERGER: Yes.

3 MR. OATES: I'm sorry? Is that a yes?

4 MR. KIRCHBERGER: That's a yes.

5 MR. OATES: Now, the language that AT&T  
6 proposes in 2.2.3.B expands upon that Commission  
7 language, Mr. Kirchberger, by saying that Verizon  
8 should offer to exchange such traffic with LECs,  
9 CLECs, and CMRS providers.

10 Is that intended by AT&T to be an  
11 expansion on the obligation that the Commission  
12 imposes in paragraph 89?

13 MR. KIRCHBERGER: I'm not aware that it  
14 is. I didn't draft this contract language, so  
15 I--if there was an intention beyond my knowledge, I  
16 can't speak for that.

17 MR. OATES: Would it be your understanding  
18 of the mirroring obligation imposed by the  
19 Commission that Verizon would satisfy that on a  
20 CLEC-by-CLEC basis if we limit the inquiry to  
21 CLECs? In other words, what I'm asking,  
22 Mr. Kirchberger, if Verizon offers to exchange

1 traffic subject to Section 251(b)(5) with AT&T at  
2 the same rates as are listed by the Commission for  
3 ISP-bound traffic, you would agree that Verizon has  
4 satisfied the mirroring obligation as far as AT&T  
5 goes?

6 MR. KIRCHBERGER: I'm aware that you have  
7 offered to AT&T to satisfy the mirroring  
8 obligations.

9 I'm also aware of the fact that AT&T has  
10 not responded to that letter. I cannot give you a  
11 direct reason why, so I think our response to that  
12 letter would probably indicate whether we accept  
13 that as meeting the mirroring obligations or not.

14 MR. OATES: Let me--what I'm really  
15 getting at, Mr. Kirchberger, in my question is, you  
16 don't suggest that Verizon has an obligation, for  
17 instance, to offer to exchange 251(b)(5) traffic at  
18 the same rate as ISP recip comp traffic with  
19 WorldCom before it can do so--or with any other  
20 CLEC before it could do so with AT&T? In other  
21 words, the obligation is satisfied on a  
22 CLEC-by-CLEC basis?

1 MR. KIRCHBERGER: I would accept that. I  
2 think the key is obligation C. If Verizon sat down  
3 with us and paid us what it owes us for past-due  
4 amounts, maybe some of this language could get  
5 cleaned up and people could move forward.

6 MR. OATES: And that past-due amount  
7 alluded to in C is a point of dispute between  
8 Verizon and AT&T, is it not?

9 MR. KIRCHBERGER: Yes, throughout the  
10 entire Verizon region. It's my understanding that  
11 the amount is in excess of 10 to \$20 million.

12 MR. OATES: And that's AT&T's position on  
13 the dispute?

14 MR. KIRCHBERGER: Yes, that is AT&T's  
15 position on the dispute, I believe.

16 MR. OATES: Is that a dispute,  
17 Mr. Kirchberger, that arises under a prior  
18 Interconnection Agreement? Is that right?

19 MR. KIRCHBERGER: It arises under the  
20 Interconnection Agreement between AT&T and Verizon,  
21 so yeah--so, would be the one that we are trying to  
22 hammer out here again today.

1 MR. OATES: If there is an obligation to  
2 repay that recip comp, the agreements to which we  
3 are here arbitrating a successor; is that right?

4 MR. KIRCHBERGER: Yes, that's correct, and  
5 it's not unreasonable that if you had past  
6 compliance problems or disputes, that you would  
7 want to try to have those cleaned up or nailed down  
8 going forward so they don't happen again.

9 MR. OATES: And the old agreement, in  
10 fact, has dispute resolution procedures, does it  
11 not, Mr. Kirchberger?

12 MR. KIRCHBERGER: Yes, it does.

13 MR. OATES: All right. In Section 2.3 of  
14 your proposed language--this is the language that  
15 discusses the growth caps; is that right?

16 MR. KIRCHBERGER: Yes, it does.

17 MR. OATES: And the growth caps are  
18 something specifically covered by the Commission's  
19 order; right?

20 MR. KIRCHBERGER: Yes.

21 MR. OATES: I'm referring to the ISP  
22 Remand Order.

1           And both the Commission's order and AT&T  
2 rely on a--in order to determine the cap for  
3 ISP-bound reciprocal compensation for the year  
4 2001, the Commission and AT&T both rely on a  
5 calculation that's based on minutes for the first  
6 quarter of 2001; is that right?

7           MR. KIRCHBERGER: That's correct.

8           MR. OATES: Does AT&T propose the same  
9 formula there that the Commission does? If you  
10 know.

11           MR. KIRCHBERGER: I don't know. I have  
12 not researched, but the details of the growth cap  
13 formula, the specification of the billing and the  
14 rates are AT&T's experts', detailed experts',  
15 interpretation of and actually just a detailed  
16 implementation guidelines of the Remand Order.

17           And what we are trying to do here is to  
18 hammer out in detail and put into the contract  
19 language what is referred to in more general terms  
20 in the order, so that there would be less disputes  
21 in the future as to the interpretation and the  
22 application of the order.

1           So--

2           MR. OATES: And I don't intend my question  
3 to be a memory test for you, Mr. Kirchberger. It's  
4 not my intent. I want to ask you about some points  
5 that appear to flag or are inconsistent with the  
6 Commission's order. Let's talk about the growth  
7 cap point for a minute.

8           If you would turn to paragraph 78 of the  
9 ISP Remand Order.

10          MR. KIRCHBERGER: I'm there.

11          MR. OATES: About halfway through that  
12 paragraph, there is the sentence that begins, "For  
13 the year 2001," and defines the formula for the cap  
14 for that particular calendar year.

15          Do you see that sentence?

16          MR. KIRCHBERGER: Yes.

17          MR. OATES: Okay. Towards the end of that  
18 sentence the Commission uses the phrase--well, let  
19 me read the entire sentence so it's in context in  
20 the record.

21          (Reading) For the year 2001, a LEC may  
22 receive compensation pursuant to a particular

1 Interconnection Agreement for ISP-bound minutes up  
2 to a ceiling equal to, on an annualized basis, the  
3 number of ISP-bound minutes for which that LEC was  
4 entitled to compensation under that agreement  
5 during the first quarter of 2001, plus a 10 percent  
6 growth factor.

7           Now, would you agree, Mr. Kirchberger,  
8 that whatever compensation--whatever compensation  
9 AT&T may be due from Verizon for ISP-bound traffic  
10 would be determined by the old Interconnection  
11 Agreement, again the one to which we are  
12 arbitrating a successor here today?

13           MR. KIRCHBERGER: I was reading. Could  
14 you repeat that?

15           MR. OATES: Yes, sir, I'm sorry.

16           Whatever compensation AT&T is due for  
17 ISP-bound traffic would be determined by the old  
18 Interconnection Agreement between Verizon and AT&T;  
19 is that right?

20           MR. KIRCHBERGER: Prior to the  
21 effectiveness of this new agreement, yes.

22           MR. OATES: Yes, sir.



1           And the amount of minutes for which AT&T  
2 is entitled to compensation for that period of time  
3 is, as you discussed a minute ago, a point of  
4 dispute between the parties, is it not?

5           MR. KIRCHBERGER: That's correct.

6           MR. OATES: All right. Now, AT&T's  
7 language on this point, if you would, please look  
8 at that--again, that's paragraph 2.3--and  
9 specifically the second sentence, (reading) The  
10 parties shall first determine the total number of  
11 minutes of use of ISP-bound traffic as defined in  
12 Section 2.1 above, terminated by one party for the  
13 other party for the three-month period commencing  
14 January 1, 2001, and ending March 21, 2001.

15           AT&T includes no qualifier in that  
16 language regarding minutes to which it was entitled  
17 to compensation, does it?

18           MR. KIRCHBERGER: No, it doesn't.

19           MR. OATES: All right. Now,  
20 Mr. Kirchberger, if you look at Section 2.5, which  
21 is the last section in the AT&T proposed language,  
22 that's a change-of-law provision, is it not?

1 MR. KIRCHBERGER: Yes, it is.

2 MR. OATES: And are you aware that there  
3 is a change-in-law provision that has been  
4 negotiated elsewhere in the contract? And I don't  
5 mean to represent that that language has been  
6 agreed to because, quite frankly, I don't know if  
7 it has or not, but there is a general change-of-law  
8 provision in the contract?

9 MR. KIRCHBERGER: I would agree that there  
10 probably is. I'm not sure whether we agreed to  
11 language on that or not.

12 MR. OATES: All right. But is it your  
13 understanding that 2.5 in the--in your Exhibit A is  
14 a change-in-law provision that is unique to the ISP  
15 reciprocal compensation issue?

16 MR. KIRCHBERGER: Yes, that's the way I  
17 read it.

18 MR. OATES: It would be AT&T's position  
19 that the general change-in-law provision is every  
20 insufficient to address whatever change in law may  
21 occur in the future for ISP-bound traffic?

22 MR. KIRCHBERGER: I believe the purpose of

1 this paragraph was to tighten up and to indicate  
2 exactly how ISP-bound traffic would be handled if,  
3 in fact, the Remand Order was modified, overturned,  
4 stayed, reversed. And to lay out a detailed  
5 approach up front rather than, I guess, debating  
6 about it and taking it to dispute resolution of  
7 interpretation of change in law at the time.

8 But what we have done here, as in many  
9 places, we have tried to have more detail in the  
10 Interconnection Agreement rather than less because  
11 less detail just sets you up for implementation  
12 problems in disputes as you go forward.

13 MR. OATES: But as I understand what you  
14 said, Mr. Kirchberger, it's AT&T's position that  
15 you want unique change-in-law provisions regarding  
16 ISP-bound traffic, compensation for ISP-bound  
17 traffic, in the event the law changes so you could  
18 reap immediate benefit from what that change might  
19 be, as opposed to relying on the general  
20 change-in-law provision; is that right?

21 MR. KIRCHBERGER: I would quibble with the  
22 words of "reap immediate benefit." I would say

1 that we are looking for a unique change--unique  
2 detail if the Remand Order is stayed, reversed, or  
3 modified, so that the appropriate benefit is  
4 available to the parties, whoever benefits from the  
5 change.

6 MR. OATES: That's not what the  
7 law--that's not what the language predicts, is it,  
8 Mr. Kirchberger? In fact, the language purports to  
9 predict what the change in law might be.

10 If you would look, please, at the last  
11 sentence or two, beginning "At such time as the ISP  
12 Remand Order is stayed," it discusses amounts  
13 immediately due and payable, and the immediate  
14 exchange of traffic in a specific fashion.

15 MR. KIRCHBERGER: The language is what it  
16 is. I mean, to try to characterize it as one way  
17 or another, I can't realistically respond to that.

18 MR. OATES: Now, I understand you're not a  
19 lawyer, Mr. Kirchberger, but to your knowledge is  
20 it possible that there could be a change in law  
21 regarding compensation for ISP-bound traffic that  
22 would be inconsistent with the language proposed by

1 AT&T?

2 MR. KIRCHBERGER: There is always that  
3 possibility.

4 MR. OATES: The AT&T language, again in  
5 that last sentence, would provide for the  
6 retroactive application of any future change of  
7 law, would it not?

8 MR. KIRCHBERGER: Yes, it would.

9 MR. OATES: All right. Mr. Kirchberger,  
10 now shifting gears, in your testimony you offered  
11 some comments about some of Verizon's testimony or  
12 proposal--proposals with regard to this issue.

13 Let me ask you to look at page four of  
14 your rebuttal testimony. Just a second, and I will  
15 give you an exhibit number. Exhibit 9, I believe.  
16 AT&T 9.

17 MR. KIRCHBERGER: I think I'm there.

18 MR. OATES: This is line seven of your  
19 testimony, which is the beginning of an answer,  
20 (reading) Can you provide some other examples of  
21 where Verizon's proposed implementation language  
22 was too general?

1 MR. KIRCHBERGER: Yes.

2 MR. OATES: And the first issue that you  
3 raise there is Verizon failed to include specific  
4 rate levels as AT&T did in part of its proposals.

5 Aren't those rates and effective dates for  
6 the rates spelled out in the ISP Remand Order,  
7 Mr. Kirchberger?

8 MR. KIRCHBERGER: Yes, they are, but the  
9 differences in our language, I think we tried to  
10 make it specific to the time frames associated with  
11 the potential contract itself.

12 MR. OATES: Doesn't the ISP order set the  
13 time frames to the rates that are applicable?

14 MR. KIRCHBERGER: The ISP Order definitely  
15 sets the time frames, and what we have done is  
16 taken them and put them in the contract language  
17 and given more specificity to it, making it a more  
18 complete package.

19 MS. PREISS: Could I interrupt for a  
20 minute, please?

21 Mr. Kirchberger, is it your understanding  
22 that the figures set out in the ISP Order, ISP

1 Remand Order, are rates are for the exchange of  
2 traffic or rate caps for the exchange of traffic?

3 MR. KIRCHBERGER: I believe they are rate  
4 caps.

5 MS. PREISS: And what AT&T has proposed in  
6 its language is actual rates or rate caps?

7 MR. KIRCHBERGER: Rates.

8 MS. PREISS: Thank you.

9 MR. OATES: In that testimony in the same  
10 area, the second paragraph of that answer,  
11 Mr. Kirchberger, on page four of your rebuttal,  
12 beginning on line 13--actually line 15, you state  
13 that Verizon has failed to specify means of  
14 calculating the growth cap, and again the question  
15 is the same: Isn't that spelled out in the  
16 Commission's order?

17 MR. KIRCHBERGER: Yes, it is.

18 MR. OATES: Mr. Kirchberger, thank you.  
19 That's all I have for you. Now, if I could move to  
20 Mr. Ball.

21 Mr. Ball, good morning.

22 MR. BALL: Good morning.

1 MR. OATES: Again, Mr. Ball, as I have  
2 just done with Mr. Kirchberger, I would like to  
3 walk through some specific issues in the language  
4 that WorldCom has proposed on this ISP-bound recip  
5 comp question. The language that I'm looking at is  
6 quoted in your direct testimony, which is  
7 Exhibit 3, and that language set out at the  
8 beginning of page 43.

9 And my first question is a housekeeping  
10 one. Should I be looking at anything else, or is  
11 that an accurate version of the proposal? It  
12 appears to be the same as what's in the JDPL.

13 MR. BALL: Yes.

14 MR. OATES: If there is any inconsistency,  
15 base on what I'm asking you, please let me know  
16 that there is not a revised version or later  
17 proposal that I'm missing.

18 Okay, like WorldCom, Mr. Ball, on your  
19 section X.3, you propose three prerequisites to the  
20 implementation of the Commission-ordered ISP-bound  
21 compensation scheme; is that right?

22 MR. BALL: Yes.



1 MR. OATES: And do you agree with the  
2 testimony of Mr. Kirchberger that the prerequisite  
3 in C regarding payment of disputed past-due amounts  
4 is not something that appears anywhere in the  
5 Commission's order?

6 MR. BALL: Yes.

7 MR. OATES: Let me ask your opinion,  
8 Mr. Ball, as to what the difference is between  
9 prerequisite A and prerequisite B.

10 MR. BALL: Well, prerequisite A basically  
11 describes the obligation that Verizon has to  
12 initiate the implementation of the rates in the FCC  
13 order, and Section B basically describes the  
14 mirroring provision.

15 MR. OATES: And do you agree with  
16 Mr. Kirchberger that AT&T--that Verizon has  
17 satisfied the obligation in A by virtue of the  
18 letter dated May 14? Are you familiar with that  
19 letter?

20 MR. BALL: I'm familiar with the letters  
21 that Verizon has sent to the CLECs, so yes.

22 MR. OATES: Do you agree that letter of

1 May 14 satisfies whatever obligation A imposes?

2 MR. BALL: Yes.

3 MR. OATES: And regarding the proposal or  
4 the prerequisite, rather, in B, again, I will ask  
5 you the same question I asked Mr. Kirchberger.

6 Is it your understanding that Verizon can  
7 satisfy that mirroring obligation on a CLEC-by-CLEC  
8 basis?

9 MR. BALL: No.

10 MS. KELLEY: Could I ask a clarifying  
11 question here? My particular question is when you  
12 ask that, are you asking whether they satisfy it  
13 under our proposed language or whether they satisfy  
14 it pursuant to the Commission's orders?

15 MR. OATES: I'm asking under your proposed  
16 language. Your proposed language, as does AT&T's,  
17 expands upon the Commission's mirroring language to  
18 the extent that it speaks of LECs, CLECs, and the  
19 MRS--

20 MR. HARRINGTON: He's testifying here and  
21 expressing his legal opinion which I'm not sure  
22 petitioners agree with.

1 MR. OATES: I'm not making any legal  
2 representations. I'm simply quoting the  
3 testimony--I'm sorry--quoting the language  
4 proposed, and I want to ask Mr. Ball what it means.

5 Let me ask you, Mr. Ball, do you have a  
6 copy of the Remand Order?

7 MR. BALL: Yes.

8 MR. OATES: If you would, look on  
9 paragraph 89 on page 44, in a sentence that begins  
10 four lines down, "The rate caps," the sentence I  
11 read earlier.

12 MR. BALL: Okay.

13 MR. OATES: Is that the mirroring  
14 obligation language you referred to?

15 MR. BALL: Yes.

16 MR. OATES: Now, this sentence is talking  
17 about incumbent LEC offering to exchange all  
18 traffic subject to 251(b)(5) at the same rate,  
19 period.

20 MR. BALL: Yes.

21 MR. OATES: The WorldCom proposed  
22 language, like the AT&T proposed language,

1 says--and it may not be exactly the same, but it's  
2 the same to the extent this question is  
3 concerned--Verizon offers to exchange all traffic  
4 subject to the recip comp provisions of Section  
5 251(b)(5) with LECs, CLECs, and MRS at these  
6 information access rates.

7           And my question to you is: Is the intent  
8 of that language to expand upon the obligation set  
9 forth in the Commission's ISP Remand Order in  
10 paragraph 89?

11           MR. BALL: No.

12           MR. OATES: And is it your understanding  
13 of WorldCom's proposed language--I'm not asking for  
14 a legal opinion, but is it your understanding of  
15 WorldCom's proposed language that once Verizon  
16 offers to exchange 251(b)(5) traffic at the same  
17 rates it proposes to exchange ISP-bound traffic  
18 with WorldCom, that Verizon satisfies that  
19 mirroring obligation, as far as WorldCom is  
20 concerned?

21           MR. BALL: No.

22           MR. OATES: All right. And why not? What

1 else would Verizon have to do?

2 MR. BALL: Well, my interpretation of the  
3 order is that Verizon must demonstrate that it is  
4 offering to exchange traffic with all carriers that  
5 it change exchanges 251(b) traffic in a given  
6 state. You cannot do that through letters. You  
7 have to do that through the traditional process  
8 with which Verizon offers to exchange traffic,  
9 which is through a filing at a state regulatory  
10 commission.

11 MR. OATES: And where do you find the  
12 support in the Act to--I'm sorry, not in the Act.  
13 What in the ISP Remand Order supports that  
14 interpretation?

15 MS. KELLEY: And I want to impose probably  
16 a continuing objection. I don't have any problem  
17 with Mr. Ball explaining his understanding.  
18 Mr. Ball is not a lawyer, however, and the  
19 order--the Commission will interpret the order to  
20 mean what the Commission interprets the order to  
21 mean. If that's different than Mr. Ball's  
22 interpretation or the same as Mr. Ball's

1 interpretation, I don't think it matters. I mean,  
2 he's not a lawyer. He could testify to his  
3 understanding, but that certainly doesn't bind  
4 WorldCom or the Commission or anything like that.

5 With that objection, I'm happy to have him  
6 answer, but I want to make that clear.

7 MR. OATES: And I would certainly agree  
8 that his testimony doesn't bind the Commission, but  
9 my question to him really was to explain this  
10 contract language, and that led to an opinion  
11 regarding the ISP Remand Order that I would like to  
12 explore.

13 And so, again, the language of the order  
14 talks about the ILEC offering traffic--

15 MR. DYGERT: I think you're welcome to  
16 explore it, subject to Ms. Kelley's objection.

17 MR. OATES: Thank you.

18 The language of the order, Mr. Ball, as  
19 you read, talks about the ILEC offering to exchange  
20 traffic, and you suggest that the ILEC needs to do  
21 something more than offer; is that right?

22 MR. BALL: No. I'm saying in order for

1 the ILEC to offer to do that, 251(b) traffic in the  
2 State of Virginia is generally offered by Verizon  
3 through a statement of generally available terms,  
4 and that was filed at the Virginia Commission and  
5 approved by the Virginia Commission.

6 If Verizon is intending to change its  
7 251(b) rates, it has to make a filing with the  
8 Virginia Commission and get it approved.

9 MR. OATES: So, under WorldCom's proposed  
10 contract language, then, Verizon would not satisfy  
11 the mirroring obligations simply by offering to  
12 exchange traffic with WorldCom at the appropriate  
13 rates?

14 MR. BALL: Well, I think we are quibbling  
15 with what the word "offer" means.

16 MR. OATES: Fair enough.

17 Now, with regard to Subsection C,  
18 Prerequisite C of Section X.3 of the WorldCom  
19 proposed language, do you agree, Mr. Ball, that any  
20 amounts that may be past due to WorldCom for  
21 compensation for ISP-bound traffic is a matter of  
22 dispute between Verizon and WorldCom?

1 MR. BALL: Oh, absolutely.

2 MR. OATES: And that dispute is something  
3 that arises under the prior Interconnection  
4 Agreement; is that right?

5 MR. BALL: Yes.

6 MR. OATES: And that prior Interconnection  
7 Agreement has a dispute resolution procedure, does  
8 it not?

9 MR. BALL: Yes.

10 MR. OATES: Now, if you would, turn to  
11 page 43--actually, we are on page 43 of your  
12 testimony. Beginning on line 11, between line 11  
13 and 19, there is a parenthetical comment, I  
14 believe, by you on the contract language that  
15 appears above; is that right?

16 MR. BALL: Yes.

17 MR. OATES: There is a sentence that  
18 begins at the tail end of line 14, says, (reading)  
19 The order represents a change in law from that  
20 which existed prior to its issuance. And just let  
21 me read on: The order established that reciprocal  
22 compensation would no longer be payable on



1 ISP-bound traffic. It is clear, therefore, that  
2 prior to the entry of the order, the traffic was  
3 subject to reciprocal compensation provisions of  
4 the Act.

5 Is that your opinion, Mr. Ball?

6 MR. BALL: Yes, it is.

7 MR. OATES: Can you point me to any place  
8 in the Commission's ISP Remand Order where the  
9 Commission reaches that conclusion?

10 MR. BALL: That there is a change of law?

11 MR. OATES: That the law that existed  
12 prior to the Remand Order mandated payment of  
13 reciprocal compensation for ISP-bound traffic.

14 MR. BALL: I don't believe there is a  
15 statement in the order that says that.

16 MR. OATES: You have a copy of the order,  
17 do you not?

18 MR. BALL: Yes, I do.

19 MR. OATES: Let me ask you to look at  
20 paragraph one, under the heading "Introduction" in  
21 the order. The second sentence says, (reading) We  
22 previously found in the declaratory ruling that

1 such traffic, discussing traffic delivered to  
2 Internet service providers, that such traffic is  
3 subject to interstate traffic subject to the  
4 jurisdiction of the Commission under Section 201 of  
5 the Act, and is not, therefore, subject to the  
6 reciprocal compensation provisions of Section  
7 251(b)(5).

8           Wasn't that the state of the law prior to  
9 the remand?

10           MR. BALL: Yes, but I would like to read  
11 the next sentence, if you don't mind.

12           MR. OATES: Go ahead.

13           MR. BALL: The Court of Appeals for the  
14 District of Columbia Circuit held on appeal,  
15 however, that the declaratory ruling failed to  
16 adequately explain why jurisdictional conclusion was  
17 relevant to the applicability of Section 251(b)(5),  
18 and remanded the issue for further consideration.

19           MR. OATES: Did the Courts of Appeals find  
20 that ISP-bound traffic is subject to reciprocal  
21 compensation?

22           MR. BALL: No, but it also did not find

1 that ISP traffic was interstate.

2 MR. OATES: They deferred that order to  
3 the Commission, did they not?

4 MR. BALL: They remanded it.

5 MR. OATES: Now, going back to your  
6 proposed language, Section X.3.2, information  
7 access rates, this is the section in which WorldCom  
8 proposes the rates that would be used for the  
9 exchange of ISP-bound traffic; is that right?

10 MR. BALL: Yes.

11 MR. OATES: Those are the rates WorldCom  
12 wants in the contract; right?

13 MR. BALL: These are the rates that we  
14 have been ordered to put in the contract.

15 MR. OATES: Is it your opinion that those  
16 rates reflect the FCC order?

17 MR. BALL: Yes.

18 MR. OATES: Reflect the caps set in the  
19 FCC order?

20 MR. BALL: Yes.

21 MR. OATES: Let me ask you to look at line  
22 6 of page 44 of your testimony. It talks about the

1 rate in place beginning December 14, 2001, ending  
2 June 13, 2003. What is that rate?

3 MR. BALL: The rate on line nine?

4 MR. OATES: The rate on line six.

5 MR. BALL: Okay. It is .001 dollars.

6 MR. OATES: Paragraph X.4, if you would,  
7 flipping over, Mr. Ball, this is WorldCom's  
8 proposal regarding the three-to-one--calculation of  
9 three-to-one ratio; is that right?

10 MR. BALL: Yes.

11 MR. OATES: And do you agree, as a  
12 question to Mr. Kirchberger, do you agree that  
13 traffic that is subject to intrastate or interstate  
14 toll will be excluded from the traffic considered  
15 in this three-to-one calculation?

16 MR. BALL: Yes.

17 MR. OATES: Now, do you agree with  
18 Mr. Kirchberger's testimony that the FCC Remand  
19 Order uses the three-to-one formula to create a  
20 rebuttable presumption regarding what traffic is  
21 subject to recip comp?

22 MR. BALL: Yes.